IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2748 OF 2005

Dhirajlal Mangaldas Ruparel ...Petitioner

Versus

Smt.Vaishali Janardan Rasal & Anr. ...Respondents

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Mr.Anil Lalla i/b Lalla & Lalla for Petitioner.

Mr.Vivek Sharma for Respondent No.1.

Mr.Y.S.Shinde, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 1, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Sharma waives notice for Respondent No.1. Mr.Shinde, A.P.P. waives notice for Respondent No.2.

3. For the nature of order that I propose to pass, it is unnecessary to advert to all the

aspects of the matter. Suffice it to observe that the Respondent No.1 filed complaint against four accused. The Trial Judge at the end of the trial convicted accused Nos.2 and 4 only. The offence for which the accused were tried was in relation to dishonour of cheque issued by the accused No.1 firm for offence under Section 138 read with Section 141 of the Negotiable Instruments Act. Accused Nos.2 to 4 were stated to be partners at the relevant time, for which reason, the criminal action proceeded even against them. During the course of the trial, however, accused No.3 died and the criminal trial abated qua him. After recording evidence, the Trial Court without recording finding of guilt against the accused No.1 firm proceeded to hold accused Nos.2 and 4, who incidentally happened to be the partners of accused No.1 firm, guilty and accordingly, registered finding of guilt and convicted them for the alleged offence. The said accused carried the matter in appeal before the Sessions Judge. The Complainant also filed revision for enhancement before the Sessions Court.

4. The Sessions Court rightly took the view

that it was imperative for the Trial Court to first record finding of guilt against the accused No.1 firm only whereafter the Court could proceed to convict the partners of the accused firm. That was not done by the Trial Court. On that finding, the Sessions Court was pleased to dispose of both the proceedings before it by a common order dated 13th October 2005. While doing so, however, the finding of guilt recorded by the Trial Court against accused No.2 has been affirmed by the Sessions Court.

5. The argument before this Court is that unless the finding of guilt was to be recorded against accused no.1 firm, there was no basis to proceed against the partners of the firm or the representatives of the firm for the nature of offence under Section 138 read with 141 of the Negotiable Instruments Act. On this submission, it is contended that the finding recorded against accused No.2 cannot be sustained. To that extent, even the Counsel for the Respondent/complainant concedes that such course adopted by the lower Court is unwarranted. I am in agreement with the

submission canvassed on behalf of the Petitioner to the above extent.

6. Be that as it may, that does not mean that the remand order passed by the Sessions Court will have to be interfered with. The Sessions Court has remitted the matter before the Trial Court for reconsideration of the case on the basis of observations made earlier that no finding of guilt has been recorded against accused No.1 firm and unless that finding was to be recorded, no criminal action could proceed against the partners of the accused No.1 firm.

7. Viewed in this perspective, the remand order passed by the Sessions Court needs no interference. However, it is made clear that the Trial Court will decide the case on its own merits in accordance with law afresh, insofar as accused Nos.1 and 2 are concerned, without being influenced by any of the observations made by the Sessions Court on merits of the case.

8. At this stage, Counsel for the Petitioner

submits that the Petitioner may be granted liberty to adduce further evidence before the Trial Court, if required. If such a course is permissible and that relief can be granted, all those aspects will have to be considered by the Trial Court in accordance with law, if such request is made before it.

9. Counsel for the Respondent/Complainant fairly accepts that the Complainant has not carried the matter in appeal against the order of acquittal in favour of accused No.4 and the complainant has no intention to do so, which position is stated on instructions from the Complainant who is present in Court. It is in this backdrop the above order be construed as remittal of the case for being decided on merits afresh, confined to accused Nos.1 and 2 only.

10. Petition disposed of on the above terms.

11. As the original case filed by the Complainant is of year 1998, the Trial Court be well advised to dispose of the case as

expeditiously as possible, preferably within three months from the receipt of writ of this Court.

A.M.KHANWILKAR, J.